



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2010-0682; FRL-10014-47-OAR]

National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector:

Action Denying a Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for reconsideration of a final rule published in the **Federal Register** on February 4, 2020. The rule promulgated amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Petroleum Refinery Sector based on the residual risk and technology review (RTR) conducted for the Petroleum Refinery source category. On April 6, 2020, the EPA received a petition for reconsideration on five issues related to the February 4, 2020, final rule. On September 3, 2020, the Administrator notified the petitioner by letter that the EPA was denying reconsideration. The basis for the denial is set out fully in the letter sent to the petitioner, and this letter is available in the rulemaking docket.

DATES: This rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Mr. Andrew Bouchard, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North

Carolina 27711; telephone number: (919) 541–4036; and email address: *bouchard.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** document, the petition for reconsideration, and the letter denying the petition for reconsideration are available in the docket the EPA established for the Petroleum Refining sector under Docket ID No. EPA-HQ-OAR-2010-0682. The petition for reconsideration is titled, *April 6, 2020 Petition for Reconsideration from EarthJustice*, which is available in Docket ID No. EPA-HQ-OAR-2010-0682. The document for the EPA’s response letter denying the petition for reconsideration is titled, *EPA’s Response to the April 6, 2020 Petition for Reconsideration from EarthJustice*, which is also available in Docket ID No. EPA-HQ-OAR-2010-0682. All documents in the docket are listed on the <http://www.regulations.gov/> website. Although listed in the index, some information is not publicly available (*i.e.*, confidential business information or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov/> or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the EPA Docket Center is (202) 566–1742. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket

Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. The amended Petroleum Refinery Sector NESHAP was published in the **Federal Register** on February 4, 2020, at 85 FR 6064.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) specifies which Federal Courts of Appeal have venue over petitions for review of final EPA actions. This section provides, in part, that “a petition for review of action of the Administrator in promulgating . . . any emission standard or requirement under section [112] of [the CAA],” or any other “nationally applicable” final action, “may be filed only in the United States Court of Appeals for the District of Columbia.”

The EPA has determined that its denial of the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the actions directly affect the Petroleum Refinery Sector NESHAP, which are nationally applicable CAA section 112 standards. Thus, any petitions for review of the EPA’s decision denying the petitioner’s request for reconsideration must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

III. Description of Action

On February 4, 2020, the EPA promulgated a final rule addressing a petition for reconsideration that was filed in response to a rule issued in December 2015,¹ which amended the Petroleum Refinery Sector NESHAP based on the RTR conducted for the Petroleum

¹ The December 1, 2015, rule can be found in the **Federal Register** at 80 FR 75178.

Refinery source category. 85 FR 6064. Following promulgation of the final rule, on April 6, 2020, the Administrator received a petition for reconsideration of certain provisions of the final rule pursuant to CAA section 307(d)(7)(B). The petition for reconsideration was filed by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition for a Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The petition for reconsideration requests that the EPA reconsider five issues in the February 4, 2020, final rule: (1) The EPA's rationale that the pressure relief device (PRD) standards and emergency flaring standards are continuous; (2) the EPA's rationale for the PRD standards under CAA sections 112(d)(2) and (3); (3) the EPA's rationale for separate work practice standards for flares operating above the smokeless capacity; (4) the EPA's rationale for risk acceptability and risk determination; and (5) the EPA's analysis and rationale in its assessment of acute risk.

CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule "can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." The requirement to convene a proceeding to reconsider a rule is, thus, based on the petitioner demonstrating to the EPA both: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final

rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

The EPA carefully reviewed the petition for reconsideration and evaluated all five issues raised to determine if they meet the CAA section 307(d)(7)(B) criteria for reconsideration. In a separate letter to the petitioner, the EPA Administrator denied the petition for reconsideration. The letter articulates in detail the rationale for the EPA's final responses and is available in the docket for this action.

Andrew Wheeler,
Administrator.